

Internal Revenue Service

Number: **201340013**
Release Date: 10/4/2013

Index Number: 2642.00-00, 9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-154389-12

Date:
June 05, 2013

Re:

Legend

Decedent	=
Trust 1	=
Trust 2	=
Trust 3	=
Child 1	=
Child 2	=
Child 3	=
Attorney	=
Trust Company	=
Date 1	=
Date 2	=
Year 1	=

Dear :

This letter responds to your authorized representative's letter of December 20, 2012 requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration Regulations to allocate Decedent's generation-skipping tax (GST) exemption to three trusts.

Facts

The facts and representations submitted are summarized as follows: Decedent established three irrevocable trusts (Trust 1, Trust 2, and Trust 3) for the benefit of her issue. In Year 1, the trusts were established on Date 1 and funded on Date 2. Trust 1, was established for the benefit of Child 1, Trust 2 for the benefit of Child 2, and Trust 3 for the benefit of Child 3. Attorney assisted Decedent with her estate planning and informed her of the advantages of creating GST trusts. Trust Company was co-trustee of Trusts 1, 2, and 3. Trust Company had prepared all of Decedent's previous returns, including Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. Attorney sent the trust instruments to Trust Company and, in the accompanying letter he confirmed his understanding that Trust Company would be responsible for filing the Year 1 Form 709 as in prior years. In an affidavit, Trust Company swore that their failure to file the Year 1 Form 709 was unintentional and inadvertent. No return was filed for the Year 1 transfers to Trust 1, Trust 2, and Trust 3. The error was discovered during the administration of Decedent's estate.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), as in effect for the year at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting

comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Decedent's Estate is granted an extension of time of 120 days from the date of this letter to allocate Decedent's available GST exemption to the Date 2 transfers to Trusts 1, 2, and 3. The allocations will be effective as of the date of the transfers to the trusts and the value of the transfers to the trusts as determined for federal gift tax purposes will be used in determining the amount of Decedent's GST exemption to be allocated to the trusts.

These allocations should be made on supplemental Form 709 and filed with the Service Center at the following address: Internal Revenue Service, Service Center – Stop , , . A copy of this letter should be attached to the supplemental Forms 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we are not ruling on whether the trust will have zero inclusion ratios as a result of the allocation of Grantor's and Spouse's GST exemptions to the transfers to the trust. The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Lorraine E. Gardner, Senior Counsel
Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy for section 6110 purposes

cc: